**Reserved Judgment**

**IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL**

**Criminal Appeal No. 263 of 2002**

1. Salim @ Nanhe @ Muzzafar
   S/o Hasmat
2. Smt. Noorbano
   W/o Salim @ Nanhe @ Muzzafar
   Both R/o Moh. Sekhupura
   Kasba & P.S. Baheri,
   District Barielly.

…… Appellants

**Versus**

State of Uttaranchal

……. Respondent

Mr. A.S. Gill, Advocate for the appellant.
Mr. T.A. Khan, Brief Holder for the respondent State.

**Coram: Hon'ble Prafulla C. Pant, J.**
**Hon'ble Dharam Veer, J.**

[Per Hon'ble Prafulla C. Pant, J.]

This appeal, preferred under Section 374(2) of the Code of Criminal Procedure, 1973 (hereinafter referred as Cr.P.C.), is directed against the judgment and order dated 30.04.2002, passed by learned II Additional Sessions Judge, Udham Singh Nagar, in Sessions trial No. 17 of 2000, whereby accused / appellant Salim @ Nanhe @ Muzzafar and Noorbano are convicted under Section 302 of the Indian Penal Code, 1860 (hereinafter

referred as I.P.C.), and each one of them has been sentenced to imprisonment for life.

2) Heard learned counsel for the parties and perused the entire evidence on record.

3) Prosecution story, in brief, is that on 04.09.1999, complainant Sabana (P.W. 1) lodged an first information report (Ext. A –1) with police Station Gadarpur that she along with her husband Aijaz (deceased) used to live in village Alakdevi. Accused Salim @ Nanhe @ Muzzafar and Aijaz (deceased) were labourers and used to go to Haldwani daily for work. On the day of incident, on their return from Haldwani, they started quarreling with each other over payment of money. After sometime, at about 6:00 P.M., on 04.09.1999, accused / appellant No. 1 Salim @ Nanhe @ Muzzafar, armed with knife, and his wife accused / appellant No. 2 Noorbano, armed with sickle, came to Aijaz and after hurling abuses at him started assaulting him with knife and sickle, which landed on the chest of the deceased. The crime was committed in an open place and witnessed by complainant Sabana (P.W. 1), Sageer Ahmad (P.W. 2) and Chandra Pal (P.W. 3). When the complainant and witnesses shouted, both the accused / appellants Salim @ Nanhe @ Muzzafar and his wife Noorbano ran away from the place of occurrence, leaving Aijaz in an injured condition. With the help of one Chote Khan and other villagers, Aijaz

was taken to hospital where he succumbed to the injuries. The first information report was lodged by Sabana, widow of the deceased, at about 20:45 hours, on the same day i.e. 04.09.1999. A crime No. 602 of 1999 was registered by the P.W. 5 Head Constable Rishipal Singh. P.W. 6 Sub Inspector Mahipal Singh, on 05.09.1999, at 8:00 A.M., took the dead body of Aizaj in his possession and prepared inquest report (Ext. A –6). He further prepared sketch of the dead body (Ext. A –9); police form No. 13 (Ext. A –7) and letter (Ext. A –8) to the Chief Medical Officer, requesting him for postmortem examination of the dead body. P.W. 3 Dr. Vimal Pant, at about 1:15 P.M., on 05.09.1999, conducted the postmortem examination on the dead body of Aizaj. P.W. 7 Sub Inspector K.K. Sharma investigated the crime and recovered the arms used in the crime at the instance of accused persons. He also prepared the site plans Ext. A –11 and Ext. A –12. After interrogating all the witnesses, and on completion of investigation, the Investigating Officer submitted charge sheet (Ext. A –14) against both the accused Salim @ Nanhe @ Muzzafar and his wife Noorbano, for their trial, in respect of offence allegedly committed by them, punishable under Section 302 of I.P.C.

4) The Chief Judicial Magistrate, Udham Singh Nagar, on receipt of the charge sheet, after giving

necessary copies to both the accused, as required under Section 207 of the Cr.P.C., committed the case to the court of Sessions, for their trial. Learned II Additional Sessions Judge, after hearing the prosecution and the defence, framed charge of offence punishable under Section 302 of the I.P.C., against both the accused Salim @ Nanhe @ Muzzafar and Noorbano. Both the accused pleaded not guilty and claimed to be tried. On this, prosecution got examined P.W. 1 Sabana (informant and widow of the deceased); P.W. 2 Sageer Ahmad (eyewitness and brother of the deceased); P.W.3 Dr. Vimal Pant (who conducted the autopsy on the dead body); P.W. 4 Chandra Pal (another eyewitness); P.W. 5 Head Constable Rishipal Singh (who registered the crime at the police station and prepared check report (Ext. A –3); P.W. 6 Sub Inspector Mahipal Singh (who prepared the inquest report and other connected papers) and P.W. 7 Sub Inspector K.K. Sharma (Investigating Officer, who investigated the crime). The oral and documentary evidence, was put to both the accused under Section 313 of Cr.P.C., in reply to which they alleged the same to be false. No evidence was adduced in defence on behalf of the accused. The trial court, after hearing the parties, found both the accused Salim @ Nanhe @ Muzzafar and his wife Noorbano, guilty of charge of offence punishable under Section 302 I.P.C., and after hearing the parties on sentence, sentenced each one of the convict to rigorous

imprisonment for life. Aggrieved by said judgment and order dated 30.04.2000, this appeal has been preferred by the convicts.

5) Before further discussions, it is pertinent to mention here, the ante mortem injuries found on the person of the deceased, recorded in the autopsy report (Ext. A –3). The same are reproduced as under:

> ***"1. Incised wound 1 cm X 1.5 cm X muscle deep present on the chest, just below suprastanal notch.***
>
> ***2. Incised wound 1.5 c X 2.5 X cavity deep, present over left side of chest 4.5 cm medial to left….. On further exposure of wound muscles found cut, ribs cut, heart cut.***
>
> ***3. Incised wound 1 cm X 1.5 cm X muscle deep on left chest, 7 cm below left side from left nipple.***
>
> ***4. Incised wound 1 cm X 2 cm X muscle deep on right buttock."***

The Medical Officer, after postmortem examination, opined that cause of death was shock and hemorrhage due to ante mortem injuries.

6) P.W. 1 Sabana, widow of the deceased, who is also an eyewitness has stated on oath that on the day of incident her husband Aizaj (deceased) and accused Salim @ Nanhe @ Muzzafar when came back from Haldwani quarreled over payment of wages. Soon thereafter, at about 6:00 P.M., accused Salim @ Nanhe

@ Muzzafar, armed with knife, along with his wife Noorbano, armed with sickle, came and started giving blows on the person of Aizaj. The witness further states that the incident was seen by her brother-in-law Sageer Ahmad, Chandra Pal and others. P.W. 1 Sabana further states that on raising alarm both the accused ran away from the place of occurrence, leaving Aizaj in an injured condition. The witness further narrates the story that her husband Aizaj was taken to the Government Hospital Gadarpur, where he succumbed to the injuries. She further stated that she lodged first information report (Ext. A –1) with police station Gadarpur.

7) The above statement of P.W. 1 Sabana gets corroborated from the statement of other two eyewitness P.W. 2 Sageer Ahmad and P.W. 4 Chandra Pal. P.W. 2 Sageer Ahmad narrating the above prosecution story has stated that he along with Chandra Pal and one Rasaaldar were walking in the village when accused Salim @ Nanhe @ Muzzafar, armed with knife, and his wife Noorbano, armed with sickle, attacked Aizaj and caused injuries on his person.

8) P.W. 4 Chandra Pal is an independent eyewitness, who has corroborated the prosecution story, narrated by the earlier two eyewitnesses i.e. P.W. 1 Sabana and P.W. 2 Sageer Ahmad. This witness has also stated that after assaulting the deceased with knife and sickle, both

the accused Salim @ Nanhe @ Muzzafar and his wife Noorbano, ran away from the scene of occurrence, towards the village, after alarm is raised by the villagers.

9) The prosecution story as against accused / appellant No. 1 Salim @ Nanhe @ Muzaafar, narrated by the three eyewitnesses, mentioned above, gets corroborated from the postmortem report (Ext. A –3), mentioned above. Apart from this, the Investigating Officer P.W. 7 Sub Inspector K.K. Sharma has been successful in making the recovery of the weapon used in the crime. From all the above evidence, we are of the view that prosecution has been successful in proving charge of offence punishable under Section 302 of I.P.C., as against accused / appellant No. 1 Salim @ Nanhe @ Muzzafar.

10) As far as accused / appellant No. 2 Noorbano is concerned, though, the eyewitnesses have made similar statements against her also, but for the following reasons, there appears reasonable doubt in the truthfulness of the prosecution story, as against her:

1. Sickle is a one sided sharp edged weapon, in arc shape, pointed at its head. Had the injuries been caused by said weapon over the chest, the point of the sickle would

cause punctured wound, at least, at one end of the incised injury, caused by it.

2. One of the eyewitnesses has stated that accused / appellant Noorbano was having an infant child in her lap at the time of the incident. It is difficult to believe that in that position, she could have actively participated in causing the injuries on the person of the deceased.

3. It has come in recovery memo (Ext. A –2), that the sickle which was recovered from Noorbano has serrated edge, instead of cutting edge. As per the Modi's Medico Legal Jurisprudence, if the blade has a serrated edge (AARENUMA) instead of cutting edge, it would cause laceration. There is no lacerated would found on the person of the deceased.

In view of the above discussion, we are of the view that charge as against accused / appellant No. 2 Noorbano cannot be said to have been proved beyond reasonable doubt.

11) In view of the above discussion, appeal of accused / appellant No. 2 Noorbano deserves to be allowed. But, the appeal of accused / appellant No. 1 Salim @ Nanhe @ Muzzafar is liable to be dismissed. Accordingly, the appeal is partly allowed. Conviction

recorded by the trial court as against accused / appellant No. 1 Salim @ Nanhe @ Muzzafar under Section 302 of I.P.C., is upheld, and sentence awarded to him of imprisonment for life, is affirmed. But, conviction and sentence recorded by the trial court under Section 302 of I.P.C. as against accused / appellant No. 2 Noorbano is, set aside. She is given benefit of doubt. She is on bail. She need not to surrender. Her bail bonds are cancelled and sureties stand discharged.

**(Dharam Veer, J.)  (Prafulla C. Pant, J.)**

Dt. March 20, 2007
H. Negi